

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RUTH ADAMS and MARGARET) No. 06 C 284
HARTLEY,)
)
Plaintiffs,)
)
v.) Chicago, Illinois
) October 3, 2006
WILMINGTON FINANCE, INC., and AIG) 9:00 a.m.
FEDERAL SAVINGS BANK,)
)
Defendants.) Motion

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID H. COAR

APPEARANCES:

For the Plaintiffs: EDELMAN COMBS LATTURNER &
GODDWIN, LLC
120 South LaSalle Street
18th Floor
Chicago, Illinois 60603
BY: MS. CATHLEEN M. COMBS
MR. JEREMY P. MONTEIRO

For the Defendant: CHAPMAN AND CUTLER, LLP
111 West Monroe Street
Chicago, Illinois 60603-4080
BY: MS. DIANE E. RIST
MR. S. TODD SIPE

TRACEY DANA McCULLOUGH, CSR, RPR
Official Court Reporter
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Chicago, Illinois 60604
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1 THE CLERK: 06 C 284, Adams versus Wilmington Finance,
2 Inc., motion by plaintiff for determination.

3 MS. COMBS: Good morning, Your Honor. Cathleen Combs
4 and Jeremy Monteiro on behalf of plaintiffs.

5 MS. RIST: And Diane Rist and Todd Sipe, Your Honor,
6 on behalf of the defendants.

7 MS. COMBS: Your Honor, we have previously been before
8 you on a motion for --

9 THE COURT: I remember. The defendants take the
10 position that this is a request for an advisory opinion. I
11 will deem the motion a motion to compel. And, therefore, the
12 advisory opinion issue goes away. Let me ask the defendants is
13 it your position -- or are you representing that at trial you
14 will not argue that consulting with counsel negates
15 willfulness? Is that your position?

16 MS. RIST: Your Honor, we have not yet decided
17 whether -- our client has not had the opportunity. We haven't
18 had a chance to complete our investigation. We do not yet know
19 whether we're going to put attorney advice into evidence. To
20 answer your question, we have not yet decided if our strategy
21 at trial --

22 THE COURT: Then I'm going to grant the plaintiffs'
23 motion. They're not required to wait until you make a decision
24 before this becomes relevant. To the extent that you hold open
25 the possibility that you will argue advice of counsel as -- to

1 rebut willfulness, they're entitled to know A, whether or not
2 that advice was given; and B, to know what that advice was.
3 They're not obliged to take your client's word for it.

4 MS. RIST: And, Your Honor, there is a new decision
5 that's just come out on this point, a firm offer case by Judge
6 Andersen. It just came out the 27th, and in that decision --

7 THE COURT: Well, as you know, I'm not bound by a
8 decision by another district judge.

9 MS. RIST: Yes, Your Honor. But --

10 THE COURT: So Judge Andersen's opinion to the
11 contrary notwithstanding, I think I grasp the issues here.

12 MS. RIST: And I was just going to say the defendant
13 in that case did not put into evidence its advice of counsel.
14 What it did was say we have compliance procedures, and part of
15 our compliance procedures include attorney review. And that is
16 the difficult issue that our client is faced with. Deciding to
17 waive the attorney/client privilege is a very serious issue
18 obviously and a complex one. And given that we can -- our
19 other alternative is simply to say what we did. We have
20 compliance procedures. Attorney review is part of that
21 process.

22 We have -- early in this case we have not yet had an
23 opportunity to decide that.

24 THE COURT: I'll give you one week to make up your
25 mind.

1 MS. RIST: Thank you.

2 MS. COMBS: Thank you very much, Your Honor.

3 THE COURT: We'll come back on the 10th at 9 o'clock.

4 MS. RIST: Thank you very much.

5 MS. COMBS: Thank you very much, Your Honor.

6 CERTIFICATE

7 I HEREBY CERTIFY that the foregoing is a true, correct
8 and complete transcript of the proceedings had at the hearing
9 of the aforementioned cause on the day and date hereof.

10 Tracy D. McCullough 10/16/06
11

12 Official Court Reporter
13 United States District Court
14 Northern District of Illinois
15 Eastern Division

Date

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